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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,639	04/15/2004	James Donald Koskey JR.	KHI-0401	9016
25/0/7 75/90 12/16/2008 LAW OFFICE OF DALE B. HALLING, LLC 655 SOUTHPOINTE CT, SUITE 100 COLORADO SPRINGS, CO 80906				
EXAMINER				
ROBINSON, DANIEL LEON				
ART UNIT		PAPER NUMBER		
3742				
MAIL DATE		DELIVERY MODE		
12/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/825,639

Applicant(s)

KOSKEY, JAMES DONALD

Examiner

DANIEL L. ROBINSON

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Amendment

Election/Restrictions

Applicant's election with traverse of Species A, Claims 1-3 and 5-12, in the reply filed on 4-16-2008 is acknowledged. The traversal is on the ground(s) that the two identified Species are not independent and distinct inventions. This is not found persuasive because both Species recite features not found in the other Species and are therefore mutually exclusive since the fire retardant covering cannot be both acrylonite butadiene styrene plastic and at the same time be made of polyvinyl chloride. The unelected Species can be rejoined to any patentable subject matter at the time of allowance.

Claim Rejections - 35 USC § 103

Claims 1-2 and 6-8 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanfield (5,371,340) in view of Feibus (5,685,257) and Hughes (U.S.Pat.6,256,257).

Stanfield discloses an animal-pet electrical heating pad 10 comprising two protecting layers 12 and 14 made of styrene-ABC and polyvinyl chloride PVC (col. 2, lines 40-67) and resistive heating wires 42 and 44 sandwiched between the two layers 12 and 14, and a transfer foil 32, but does not disclose a truncated folded circle and a fire retardant covering. Feibus discloses a pet cushion comprising covers 12 and 30 that can be formed from a single sheet and folded in half (col. 4, lines 4-15) and the cushion covers 12 and 30 are fire resistant (col. 4, lines 26-40). Hughes and discloses a heater comprising a cover 14 having a shape of a truncated circle on the sides (Fig. 1).

It would have been obvious to one having ordinary skill in the art to modify Stanfield's invention to include a fire resistant covering formed from a single sheet folded in half as taught by Feibus in order to enhance the process of making the cushion and reduce cost, also in order to protect pet from potential injuries due to heat or fire, and also the covering having a truncated shape as taught by Hughes in order to better fit the petmat into the doghouse. Hughes also shows using two pillow coverings to further encase and protect the inner heater and Hughes also shows using a third case 60 to carry the heated pillow. The exact shape of the pillow is well within the design abilities of some having ordinary skill in the art as per *In re Dailey*, 357 F. 2nd 669, 149 USPQ 47 (CCPA 1966). Stanfield discloses bonding - sealing of the layers 12 and 14 by waterproof adhesive, or other method could be used for bonding these layers (col. 2, lines 50-59). As for claim 6, it would be obvious to make a width of the truncated circle 10% shorter than a radius as a matter of design choice in order to obtain result wanted by user.

Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanfield in view of Feibus and Hughes and further in view of Brigham(U.S.Pat.4,429,216). Stanfield in view Feibus and Hughes does not explicitly show an acrylonitrile butadiene styreneplastic covering. Brigham discloses a flexible conductive layered element that shows using acrylonitrile butadiene styrene plastic as any layer in a layered structure because it has good adhesive properties.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stanfield (5,371,340) in view of Feibus (5,685,257) and Hughes (U.S.Pat.6,256,257). And further in view of Rau et al.(U.S.Pat.5,814,175). Stanfield in view of Feibus and Hughes does not explicitly show a welded seam. Rau discloses a welded thermoplastic polymer article and a method of and apparatus for making same that explicitly shows a welded seam. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to weld a seam because a resistive ribbon can be reused.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stanfield in view of Feibus, Hughes and Brigman and further in view of Graflind. Stanfield in view of Feibus, Hughes and Brigman discloses substantially the claimed invention including the heat transfer foil 32, but does not disclose a second heat transfer foil. Graflind discloses a heating pad having several heating foils 11-18. It would have been obvious to one having ordinary skill in the art to modify Stanfield's invention to include a second foil as taught by Graflind in order to better absorb heat and conserve energy as

taught by Stanfield (col. 4, lines 26-32).

Response to Arguments

Applicant's arguments filed 9-9-2008 have been fully considered but they are not persuasive. Applicant's argument that none of the references show a truncated circle see Feibus figure 1 and refer to first 103 rejection above. Alternately it has been held ***In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)*** that a change in shape is generally recognized as being within the level of ordinary skill in the art. Also the method of manufacture is not germane to the patentability of an article.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL L. ROBINSON whose telephone number is (571)272-4788. The examiner can normally be reached on m-f 5:30-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu B Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DLr

/Daniel L Robinson/
Primary Examiner, Art Unit 3742